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AUG 25 2005

OFFICE OF PETITIONS

In re Application of :
James J. Fort, et al. :
Application No. 09/438,994 :
Filed: November 12, 1999 :
Attorney Docket No. 6487.US.01 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 20, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

The decision mailed August 10, 2005 is hereby **vacated** for the reason stated below.

The previous decision was inadvertently granted based on a box checked for a non-final action. A review of the file record discloses that the action mailed on May 20, 2003 was clearly a final action made by the examiner. The USPTO wishes to apologize for any inconvenience this error may have caused petitioner.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "**Renewed Petition under 37 CFR 1.137(b)**." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of May 20, 2003. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee as required by 37 CFR 1.17(b)), an amendment that *prima facie* places the application in condition for allowance, or the filing of a continuing application. See MPEP 711.03(c)(III)(A)(2). Since the amendment submitted with the instant petition on July 20, 2005, does not *prima facie* place the application in condition for allowance, the reply required must be a Notice of Appeal (and appeal fee) or the filing of a continuing application. See attached Advisory Action.

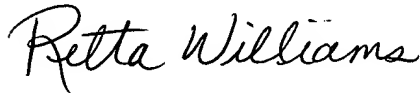
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Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3229.

A handwritten signature in black ink that reads "Retta Williams". The signature is written in a cursive, flowing style.

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Attachment: Advisory Action